BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re:	The Sully Corporation	)	
	Personal Property Account No. P-039139	)	Shelby County
	Tax years 2003, 2004	)	

INITIAL DECISION AND ORDER

Statement of the Case

The Shelby County Assessor of Property ("Assessor") has made the following back assessments/reassessments of the subject property:

Tax Year	Original Assessment	Revised Assessment	Back Assessment/ Reassessment
2004	$42,420	$323,910	$281,490
2005	$36,630	$374,460	$337,830

On February 14, 2006, the taxpayer filed direct appeals with the State Board of Equalization ("State Board").

The undersigned administrative judge conducted a hearing of this matter on June 22, 2006 in Memphis. The Sully Corporation ("Sully"), the appellant, was represented by its president, Richard Sullivan and controller, Don Heitner. Assistant Shelby County Attorney Thomas Williams appeared on the Assessor's behalf. Also in attendance at the hearing were Assessor's representatives Gwendolyn Cranshaw, CPA and Eric Beaupre, CPA, along with independent auditor Neill Murphy, of Mendola & Associates, LLC (Knoxville).

Findings of Fact and Conclusions of Law

Background. Sully is licensed by the Motor Vehicle Commission as a "motor vehicle dealer" pursuant to Tenn. Code Ann. sections 55-17-101 *et seq.*[1] The property in question is housed in the company's place of business at 792 South Cooper in Memphis.

As explained in an attachment to the appeal forms, Sully "perform(s) modifications to trucks, vans, and cab/chassis by adding components, such as bodies, rack systems, lifts, bins and other accessories to these vehicles in order to be utilized as useful commercial vehicles." The company purchases completed cargo vans (bearing vehicle identification numbers) directly from the manufacturer and "customizes" them for resale and use as group transportation

[1]Tenn. Code Ann. section 55-17-102(16) defines *motor vehicle dealer* as "any person…engaged in the business of selling, offering to sell, soliciting or advertising the sale of motor vehicles or recreational vehicles, or possessing motor vehicles or recreational vehicles for the purpose of resale, either on that person's own account or on behalf of another, either as that person's primary business or incidental to that person's business."

vehicles.[2] Exhibits 1 and 2. This process typically entails such operations as the addition of windows and passenger seats; extension of roofs; and graphics. Sully's clientele includes hotels; churches; day care centers; and assisted living facilities.

The back assessments/reassessments under appeal resulted from an audit of the subject account by Mendola & Associates. In reviewing Sully's trial balances for the relevant periods, the auditor discovered the entry of debits for various supplies under the heading "manufacturing costs." Exhibits 3 and 4. The auditor also noticed accounting entries for "work-in-process." Consequently, the auditor picked up most of the company's stock of chassis (cargo vans) and components as GROUP 8 raw materials. This finding alone increased the assessments for tax years 2004 and 2005 by $222,450 and $282,180, respectively.[3]

Contentions of the Parties. While acknowledging that Sully does "extensive work at times," Mr. Sullivan pointed out that most new motor vehicle dealers modify their inventory of cars and trucks to some degree by installing such accessories as stereo equipment, security alarms, and sunroofs. Yet none of those dealers, to the best of Sully's knowledge, had ever paid personal property tax on its inventory.

But in the Assessor's view, Sully was unmistakably engaged in the fabrication of a new product. Unlike the accessories commonly installed by automobile dealers, Mr. Williams asserted in his *Post-Hearing Brief*, Sully's "major modifications" to standard commercial vans were intended to convert them into different kinds of vehicles.

Applicable Law. Article II, section 28 of the Tennessee Constitution provides that "all property real, personal or mixed shall be subject to taxation" unless exempted by the legislature. All business or professional entities must submit annually to the assessor on the prescribed form a complete list of the tangible personal property used (or held for use) in their business or profession, excluding *inventories of merchandise held for sale or exchange.* Tenn. Code Ann. section 67-5-903. As defined in Tenn. Code Ann. section 67-5-901(b), inventories include "tangible personal property held for sale or rental, but does not include such property in the possession of a lessee." In keeping with Article II, section 28 of the Tennessee Constitution, the General Assembly has expressed the intent that inventories of merchandise held for sale or exchange, which are taxable under the Business Tax Act, not be subject to ad valorem taxation.[4]

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[2]It should be noted that Sully resells some vans without modification ("as is").

[3]The other audit findings were resolved in the taxpayer's favor, leaving the tax status of the unreported chassis and components as the only issue in the instant case.

[4]Section 67-4-702(9) of the Business Tax Act contains a substantially identical definition of "inventories of merchandise held for sale or exchange."

Among the types of fixed assets which are reportable under Tenn. Code Ann. section 67-5-903 are *raw materials.* State Board Rule 0600-5-.01(8) defines that term as "items of tangible personal property, crude or processed, which are held or maintained **by a manufacturer** for use through refining, combining, or any other process in the production or fabrication of another item or product." [Emphasis added.]

As the party seeking to change the current assessments of the subject property, the taxpayer has the burden of proof in this administrative proceeding. State Board Rule 0600-1-.11(1).

Analysis. Stressing its licensure as a motor vehicle **dealer**, Sully maintains that it is not a "manufacturer" within the scope of the quoted rule. Yet the fact that an entity may not be considered a *manufacturer* under a state or federal licensing or regulatory statute does not preclude classification of such entity as a manufacturer for personal property tax purposes.

The term "manufacturer" is not defined in Tenn. Code Ann. sections 67-5-901 *et seq.*, or in the rules governing the assessment of tangible personal property. However, decisions of the State Board have made clear that even relatively simple functions may rise to the level of manufacturing. For example, in J. M. Smucker Company (Shelby County, Final Decision and Order, Tax Year 1984), a producer of jams, jellies, and preserves sought exemption of the jars, lids, and labels used to package and identify such foods under the "property in transit" provisions of Tenn. Code Ann. section 67-5-217(b). The Assessment Appeals Commission rejected that theory on the following rationale:

> If the J. M. Smucker Company were the vendor of jars and lids, then perhaps the above statute would apply. However, it is very clear that the appellant fills these jars with their product, seals the jar with a lid and affixes a label to the jar. **This is plainly a manufacturing process in that the materials are integrated into the finished product.**
>
> ...[T]hese materials are raw materials which are essential to the manufacturing process engaged in by Smuckers and for this reason should be included as personal property owned by the appellant and assessable to them. [Emphasis added.]

Id. at p. 2.

More recently, Hypertech, Inc. (Shelby County, Tax Years 2001—2003, Initial Decision and Order, February 1, 2005) involved a business that purchased fully assembled "power programming devices" for computer-controlled vehicles. At the company's warehouse division, its personnel inserted into each of these devices a separately produced chip that was specially programmed to enhance their performance. The company packaged and sold the power programmers, as modified, to retail outlets at a premium. Finding that "the assembly of the chips and programming devices created a new product with significantly greater value than its

component parts," Administrative Judge Mark J. Minsky held that the company was a manufacturer to whom those items were assessable as raw materials. *Id.* at p. 5.

Likewise, in the opinion of the undersigned administrative judge, the chassis and components here have been properly assessed to Sully. Apart from the references in the company's own books to "manufacturing" and "work-in-process," the evidence of record indicates that the appellant markedly changes the form and appearance of these items – adding considerable value to them in the process.

The fact that other holders of a motor vehicle dealer's license may sell the very same van models without paying personal property tax on them is not, in or by itself, determinative. As counsel for the Assessor conceded in his *Post-Hearing Brief*, "[t]hose vans that are bought and sold without substantial and material modification, or simply accessorized, are exempt under the applicable vehicle dealer or held for sale statutes." Rather, the relevant inquiry is whether the chassis and components at issue are truly held for sale as received *by Sully*. In the appellant's hands, these items clearly appear to undergo such transformation as to justify assessment of them as raw materials.

Order

It is, therefore, ORDERED that the subject property be valued as follows:

TAX YEAR	APPRAISAL	ASSESSMENT
2004	$ 882,900	$264,870
2005	$1,062,700	$318,810

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is

requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 28th day of July, 2006.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Don Heitner, The Sully Corporation
Thomas Williams, Assistant Shelby County Attorney
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office

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